

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

15 MISC 165

VITAMINS ONLINE, INC., a Delaware corporation,

Plaintiff/Counterclaim Defendant,

v.

HEARTWISE, INC. an Oregon corporation d/b/a NATUREWISE, and DavidPaul Doyle, individually,

Defendants/Counterclaim Plaintiff.

HEARTWISE, INC. an Oregon corporation d/b/a NATUREWISE,

Third-Party Plaintiff,

v.

NUTRIGOLD, INC., a Delaware corporation, NUTRIGOLD, INC. an expired Utah corporation d/b/a BUYHERBS, and OSMAN KHAN, an individual,

Third-Party Defendants.

Miscellaneous CA# \_\_\_\_\_

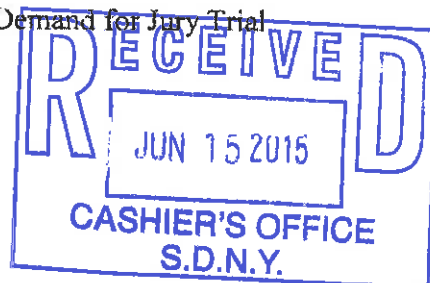
**DECLARATION OF RICHARD W. MEIROWITZ, ESQ. IN SUPPORT OF VITAMINS ONLINE, INC.'S, NUTRIGOLD, INC.'S AND OSMAN KHAN'S MOTION TO QUASH SUBPOENA OF NON-PARTY RICHARD W. MEIROWITZ, ESQ.**

Pending in the U.S. District Court for the District of Utah, Central Division

Civil Action No. 2:13-cv-00982-DAK

Judge Dale A. Kimball

Demand for Jury Trial



Pursuant to 28 U.S.C. § 1746, I, Richard W. Meirowitz, hereby declare as follows:

1. I am an attorney, licensed to practice in the state of New York, the United States District Courts for the Eastern and Southern Districts of New York, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court.

2. I submit this declaration in support of “Vitamins Online, Inc.’s, NutriGold, Inc.’s and Osman Khan’s Motion to Quash Subpoena of Non-Party Witness Richard W. Mcirowitz, Esq.” and hereby join the Motion to Quash. In the event the Motion to Quash is granted, I will return the \$88.09 Witness Fee that was served with the subpoena.

3. I have been subpoenaed by a Defendant, Counterclaim Plaintiff and Third-Party Plaintiff HeartWise, Inc. d/b/a NatureWise (hereafter “NatureWise”) to produce documents and to provide deposition testimony in the case captioned *Vitamins Online, Inc. v. Heartwise, Inc. d/b/a Naturewise*, Civil Action No. 2:13-cv-00982-DAK, currently pending in the U.S. District Court for the District of Utah (“the Utah Litigation”).

4. I have an attorney-client relationship with Vitamins Online, Inc., NutriGold, Inc. and Osman Khan, who are named as Counterclaim Defendant and Third-Party Defendants, respectively, in the Utah Litigation.

5. I was originally served with the aforementioned subpoena on February 9, 2015 (the “Original Subpoena”), a true and correct copy of which is attached hereto as Exhibit A.

6. The Original Subpoena was defective because it was issued out of the United States District Court for the Eastern District of New York for the Utah Litigation, which was pending in the United States District Court for the District of Utah, Central Division. failed to include the required witness fee, and called for compliance in the Southern District of New York despite the fact that I reside in the Eastern District of New York.

7. I informed counsel for NatureWise of this deficiency via email on February 15, 2015. a true and correct copy of which is attached hereto as Exhibit B. I also informed NatureWise’s counsel of my attorney-client relationship with certain parties to the Utah Litigation in that same email.

8. NatureWise's counsel withdrew the Original Subpoena on February 17, 2015, in response to my email regarding the deficiencies. A true and correct copy of an email conversation between me and NatureWise's counsel confirming the withdrawal of the Original Subpoena is attached hereto as Exhibit C.

9. On June 1, 2015, I was subsequently served with yet another subpoena, which was essentially a duplicate of the Original Subpoena, except that this time, the subpoena issued from the United States District Court for the District of Utah, Central Division, which is the court where the Utah Litigation is pending (the "Amended Subpoena"). A true and correct copy of the Amended Subpoena is attached hereto as Exhibit D.

10. I have reviewed the claims, counterclaims and third-party claims alleged in the pleadings in the Utah Litigation of my own accord. From reading those documents I understand that each of the claims, counterclaims, and third-party claims pertains to activities and conduct regarding dietary supplements containing green coffee extract and/or garcinia cambogia extract. Whereas I have had no involvement with the products at issue in the case, I have no personal independent knowledge regarding facts pertaining to the claims, counterclaims and third-party claims, or to the defenses of these counts except for what I gleaned reading those pleadings.

11. I am frequently a reviewer of products on Amazon.com and have reviewed dietary supplements sold by both NutriGold and NatureWise that are not at issue in the Utah Litigation. My reviews of NutriGold products have been both negative and positive over the years, and my review of NatureWise's product was generally negative. However, all of these reviews are based on my own independent assessment of such products.

12. I have never been asked by Vitamins Online, NutriGold, Inc., Osman Khan, BuyHerbs, or anyone acting on their behalf, to post a review of any product, including any NatureWise product or any NutriGold product.

13. I have never reviewed or posted a review of any garcinia cambogia or green coffee products that are at issue in the Utah Litigation.

14. The first and only time I ever reviewed a NatureWise product was for NatureWise's Krill Oil product in the fall of 2014, which was approximately one year after the claims, counterclaims and third-party claims were filed in the Utah Litigation.

15. In light of the foregoing, I believe that both the Original Subpoena and Amended Subpoena are calculated to harass both me and those with whom I have an attorney-client relationship.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of June, 2015.

By   
Richard W. Meirowitz